



Federal Communications Commission
Washington, D.C. 20554

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SMALL ENTITY COMPLIANCE GUIDE

Amendment of the Commission's Rules Regarding Public Notice of the Filing of Applications

FCC 20-65

MB Docket Nos. 17-264, 17-105, 05-6

Released May 13, 2020

This Guide is prepared in accordance with the requirements of section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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I. OBJECTIVES OF THE PROCEEDING

In the *Second Report and Order* in MB Dockets 17-264, *Amendment of Section 73.3580 of the Commission's Rules Regarding Public Notice of the Filing of Applications*; 17-105, *Modernization of Media Regulation Initiative*; and 05-6, *Revision of the Public Notice Requirements of Section 73.3580*, the Commission amended certain rules, described in detail in Section II, pertaining to the local public notice given by some applicants in the mass media services, in order to update, clarify, and streamline section 73.3580 and the local public notice obligations contained in that and other related rule sections. The Communications Act of 1934, as amended (the Act), requires applicants for certain broadcast authorizations to give notice of application filing in the principal area which is served or is to be served by the station. This is to ensure that relevant communities are made aware of applications and are given the opportunity to participate in the broadcast licensing process. However, section 73.3580 of the Commission's rules, which sets forth the public notice requirement, had become unnecessarily complicated and confusing.

Prior to the rule amendments, broadcasters gave local public notice of applications by publishing such notices in local newspapers, and/or by broadcasting detailed announcements on the air. Newspaper publication is expensive and therefore burdensome on broadcasters, and many newspapers are going out of business. Consumers increasingly turn to the Internet for news and local information. Long on-air announcements consume valuable air time that could be used to generate revenue or programming. Additionally, under the prior rules local notice consisted largely of a summary of the filed application, with the public having to travel to the station's main studio or other site to view the actual application. The Commission initiated this rule making to make broadcasters' public notice obligations clearer, simpler, and less expensive, and to make it easier for the public to read applications on the Internet rather than having to travel to the station or rely on summaries of applications.

Notably, the Commission eliminated the obligation to publish public notices in print newspapers, and required instead that applicants provide public notice through online notices that link directly to the Commission-hosted online public inspection file (OPIF) or the Commission's application filing databases, and/or through on-air announcements that direct viewers and listeners to those application resources. The Commission adopted these new rules in order to simplify broadcasters' local public notice obligations in a manner that reduces costs and burdens on applicants, while facilitating robust public participation in the broadcast licensing process.

Specifically, in the *Second Report and Order* the Commission (a) amended 47 CFR § 73.3580 by providing for online notice of application filing, eliminating the need to publish such notice in newspapers, with standard online notice texts to be posted for 30 continuous days on applicant-affiliated, or publicly accessible and locally targeted websites linking the public to the application in Commission databases; (b) further amended 47 CFR § 73.3580 to clarify and update the rule regarding on-air notice of application filing, by providing a shorter and simpler on-air script for public notice announcements, so that the on-air announcements now direct viewers and listeners to the actual filed application, as available in the online Commission databases; (c) amended 47 CFR § 73.3594 to modify notice to be given in the case of an application designated for an evidentiary hearing, conforming such notice to that given under section 73.3580; (d) amended 47 CFR § 73.801 to add section 73.3580 to the list of rule sections applicable to low-power FM (LPFM) stations; and (e) amended 47 CFR §§ 73.3526, 73.3527, 73.3571, and 73.3573, to conform those sections with the modifications to section 73.3580.

The rule amendments in the *Second Report and Order* reduce the burdens on broadcasters and international broadcast stations by simplifying the public notice to be given, by linking public notices directly to the filed application in the online Commission databases, and by eliminating the expense of publishing notice in newspapers.

II. COMPLIANCE REQUIREMENTS

The *Second Report and Order*, as explained below, modifies the rules governing the local public notice to be given by certain applicants for new broadcast and international broadcast construction permits and licenses, renewals of licenses, and assignments or transfers of station authorizations, as found in 47 CFR § 73.3580, as well as the rules governing local public notice given by broadcast licensees and permittees whose facilities or applications are designated for hearing, as found in 47 CFR § 73.3594.

- **Online Posting of Notice.** The *Second Report and Order* revises 47 CFR § 73.3580, by replacing the former requirement that some public notice be accomplished through newspaper publication with a requirement that public notice be posted online on a locally targeted (and, in most cases, applicant-affiliated) publicly accessible website with a link to the application itself, thereby enabling the public to view the entire application rather than relying on a summary of the application, as under the previous rule.
- The station posting online notice must include on the website home page a link or tab, connecting to a separate page containing the online notice, that is conspicuously displayed so that it is readily readable, understandable, and locatable by visitors to that page, and thus may be quickly found among other web content. The rule-prescribed text of the online notice, which is shorter than the previously required newspaper notice text, must contain hyperlinks to the filed application in the station's online public inspection file (OPIF) or, if there is no OPIF, to the filed application in the Media Bureau's LMS or CDBS database. The online notice must be posted for a period of 30 consecutive days, starting no later than the fifth business day after the Commission releases a Public Notice accepting the application for filing. The notice must be posted on the station's, applicant's, or parent entity's website if available. If an applicant-affiliated website is not available, the applicant may post online notice on a publicly accessible website that is locally targeted to the community to be served by the station or proposed station. If the applicant cannot locate such a publicly accessible, locally targeted website that will allow it to post the notice without cost for 30 consecutive days, it must post on a pay-to-post website for four 24-hour periods, once per week for four consecutive weeks. Noncommercial educational (NCE) stations are exempt from online notice requirements (as they were previously exempted from newspaper publication), except when the NCE station is silent or when filing the initial construction permit application.
- **On-Air Announcements.** The *Second Report and Order* simplifies and standardizes the public notice requirements for on-air announcements, and eliminates all pre-filing announcements for renewal applications. The script of the on-air announcement is shorter than the previously required on-air announcement. On-air announcements now direct viewers and listeners to the filed application in the station's online public inspection file (OPIF) rather than providing a lengthy summary of the application as was previously the case. Applicants making on-air announcements must make six announcements, once per week for four consecutive weeks, with no more than one announcement in a single day and no more than two per week. On-air announcements may be made anytime between 7:00 a.m. and 11:00 p.m. Monday through Friday, commencing immediately after the Commission issues a Public Notice accepting the application for filing, but not later than the fifth business day following release of the Commission Public Notice of acceptance. As was previously the case, a station must broadcast on-air announcements only on its primary program channel and not on multicast channels, except for a separately licensed television station broadcasting on a multicast channel under a channel sharing agreement, which has an independent obligation to comply with all pertinent statutory requirements and Commission rules.
- The *Second Report and Order* confirms that low-power FM (LPFM) stations and international broadcast stations have local public notice obligations, which are spelled out in the amended 47 CFR § 73.3580.

- ***International Broadcast Stations:*** These are commonly known as shortwave stations, designed to be heard by the public in countries other than the United States. These stations must give online notice of application filing, by posting on a publicly accessible website locally targeted to the community where the station's transmission facilities are located (47 CFR § 73.3580(c)(1)(ii), (c)(2)(iv), (c)(3)(iii), (c)(4)(iv)).
- ***U.S. Studios of Foreign Stations Broadcasting to the U.S.:*** A station applying for an authorization under section 325(c) of the Communications Act, to have a studio in the United States that supplies programming to a foreign station that broadcasts back to the United States, must give online notice as described above (47 CFR § 73.3580(c)(6)).
- ***Stations Whose Licenses Have Been Designated for Hearing:*** A station whose license has been designated for an evidentiary hearing must give public notice of the issues on which it has been designated. This does not happen often. A station so designated must give both online notice and make on-air announcements, as detailed above. However, the station designated for hearing must also, in the online notice, provide a list of the issues in the hearing, as listed in the Hearing Designation Order, or a summary of the Hearing Designation Order (47 CFR § 73.3594).

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The *Second Report and Order* does not adopt new reporting requirements. While the *Second Report and Order* retains the compliance certification of on-air announcements found in 47 CFR §§ 73.3526(e) and 73.3527(e), as described in paragraph 8 below the new rules omit the former requirement that the entire on-air announcement text be included in the filed certification statement. Along with the dates and times that the on-air announcements were broadcast, the new certification statement now simply verifies that the on-air announcement was broadcast using the standardized text set forth in section 73.3580(b)(1)(i).

The Commission's actions in the *Second Report and Order* adopt recordkeeping requirements insofar as they amend 47 CFR §§ 73.3526(e) and 73.3527(e) of the rules to reflect the nature of the new on-air announcement requirements for which licensees must certify compliance and retain the certification in the online public inspection file (OPIF). The new requirements are no more extensive than the previous certification and retention requirements, and in fact are less onerous in that there are fewer on-air announcements requiring certification, and OPIF is online rather than a physical file kept at the station studio or other locale. Thus, the impact on small entities will be no greater than it was formerly, and in most cases the new rules will be less burdensome.

IV. IMPLEMENTATION DATE

The following rule in the *Second Report and Order* became effective 30 days after publication of the text or summary thereof in the *Federal Register*, i.e., on July 20, 2020: 47 CFR § 73.801.

The following rules in the *Second Report and Order* required approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act: 47 CFR § 73.3525(b) (deleted), 47 CFR § 73.3526(e)(13), 47 CFR § 73.3527(e)(10), 47 CFR § 73.3571(j)(3), 47 CFR § 73.3573(g)(3), 47 CFR § 73.3580, and 47 CFR § 73.3594. Notice of OMB approval was published in the *Federal Register* on October 29, 2020, announcing the effective date of October 30, 2020.

V. INTERNET LINKS

A copy of the *Second Report and Order* is available at: <https://docs.fcc.gov/public/attachments/FCC-20-65A1.pdf>

A copy of the *Federal Register* Summary of the *Second Report and Order* is available at: <https://www.federalregister.gov/documents/2020/06/18/2020-11127/filing-of-applications-modernization-of-media-regulation-initiative-revision-of-the-public-notice>

A copy of the *Federal Register* notice of OMB approval and effective date of rules adopted in the *Second Report and Order* is available at: <https://www.federalregister.gov/documents/2020/10/29/2020-23441/filing-of-applications-modernization-of-media-regulation-initiative-revision-of-the-public-notice>